

33. It is also not credible that Mr. Solomon would have believed that improvements in the quality of programming on Tennis Channel would cause Comcast to view the 2009 proposal more favorably than the 2006 and 2007 MFN offers. First, Tennis Channel had been unsuccessful at persuading other MVPDs to carry its programming more broadly, and thus at the time of the 2009 proposal, most other major distributors continued to carry Tennis Channel on a sports tier or did not carry it at all.<sup>75</sup> Second, many of the so-called programming improvements were not really new in 2009, but either had been implemented before the 2007 MFN offer or were already part of the contract rights that Comcast enjoyed under its 2005 Affiliation Agreement. For example, Tennis Channel had obtained its limited telecast rights to the French Open, the Australian Open and Wimbledon by 2007 and [REDACTED] [REDACTED] and the 2005 Affiliation Agreement already required Tennis Channel to provide HD programming to Comcast when it became available.<sup>76</sup>

34. Mr. Solomon's testimony that Tennis Channel's programming should be compelling to Comcast viewers because a "preponderance" of Tennis Channel's "anchor programming" is live also was not credible.<sup>77</sup> On cross-examination, Mr. Solomon tried

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<sup>75</sup> Comcast Exh. 80 (Orszag Written Direct) ¶¶ 22-23; Solomon Cross, Apr. 25, 2011 Tr. 422:21-423:7; Comcast Exh. 201; Comcast Exh. 517 (Solomon Dep.) 154:3-11; 196:9-197:19 [REDACTED]

[REDACTED] Unwilling to launch Tennis Channel on a broad tier, Cablevision subsequently joined the NCTC and in August 2009 launched Tennis Channel on a sports tier pursuant to Tennis Channel's 2002 contract with the NCTC. (Comcast Exh. 598; *see also* Comcast Exh. 231 (NCTC Affiliation Agreement)). In June 2010, AT&T launched Tennis Channel on a tier with about [REDACTED] penetration. (Comcast Exhs. 201, 250).

<sup>76</sup> Comcast Exhs. 66, 164, 204.

<sup>77</sup> Solomon Cross, Apr. 25, 2011 Tr. 464:4-464:9.

to defend this overstatement by claiming that in his view 25% was a “preponderance,”<sup>78</sup> and after the Presiding Judge observed that the witness was not answering his question, Mr. Solomon finally admitted that his use of the term “anchor programming” was not standard in the industry and was Tennis Channel’s term.<sup>79</sup>

35. Mr. Solomon also knew from communications with Mr. Bond before the 2009 proposal was presented that Comcast’s major concern would be the significant increase in costs.<sup>80</sup> Comcast had consistently identified increased costs as a major concern at the time of the 2006 and 2007 MFN offers, and Mr. Bond reiterated that concern in discussions with Mr. Solomon in the months leading up to the 2009 proposal.<sup>81</sup> Thus, in conversations between the two on March 4 and again on March 30, Mr. Bond explained to Mr. Solomon that increasing distribution beyond the sports tier would impose significant cost increases on Comcast and invited Mr. Solomon to propose ways in which the additional cost burden to Comcast might be reduced or eliminated.<sup>82</sup>

36. In response, however, Mr. Solomon sent Mr. Bond a letter on April 22 which Mr. Bond credibly characterized as aggressive in that it failed to address the cost issue that Mr. Bond had raised and, instead, threatened that Comcast had not “lived up to” the “spirit and substance” of the 2005 Affiliation Agreement.<sup>83</sup> Tennis Channel has

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<sup>78</sup> Solomon Cross, Apr. 25, 2011 Tr. 465:13-15.

<sup>79</sup> Solomon Cross, Apr. 25, 2011 Tr. 524:9-526:11.

<sup>80</sup> Comcast Exh. 517 (Solomon Dep.) 300:25-302:7.

<sup>81</sup> Comcast Exh. 75 (Bond Written Direct) ¶ 12.

<sup>82</sup> Comcast Exh. 75 (Bond Written Direct) ¶¶ 10, 12; Bond Direct, Apr. 29, 2011 Tr. 2088:21-2089:2; Bond Cross, Apr. 29, 2011 Tr. 2208:1-11.

<sup>83</sup> Comcast Exh. 592; Comcast Exh. 75 (Bond Written Direct) ¶ 13; Bond Direct, Apr. 29, 2011 Tr. 2107:16-2109:17.

conceded in this proceeding, however, that Comcast has fully complied with the terms of that agreement.<sup>84</sup>

37. Mr. Bond testified that after receiving the 2009 proposal, Comcast performed another cost-benefit analysis which showed, once again, that the increased costs would be significant, with no offsetting benefit or gain.<sup>85</sup> Mr. Bond testified that he asked his direct report, Jennifer Gaiski, to calculate the increased cost of the proposal and also to check with the division heads to determine if there was any indication of subscriber interest in broader distribution of Tennis Channel in any local markets.<sup>86</sup> Ms. Gaiski testified that she performed both tasks, and her testimony was fully corroborated by contemporaneous documentation of both tasks.<sup>87</sup> During her hearing testimony, Ms. Gaiski identified the cost calculation spreadsheet she had prepared shortly after the 2009 offer showing that the increased cost to Comcast would be between [REDACTED] over the remaining contract term,<sup>88</sup> and Ms. Gaiski also identified the handwritten notes she made of her conversation in early June with division heads.<sup>89</sup> Those contemporaneous records completely corroborated Ms. Gaiski's testimony that the

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<sup>84</sup> Tennis Channel Opening, Apr. 25, 2011 Tr. 121:16-19.

<sup>85</sup> Comcast Exh. 75 (Bond Written Direct) ¶¶ 18-19; Comcast Exh. 78 (Gaiski Written Direct) ¶¶ 17-18; Bond Direct, Apr. 29, 2011 Tr. 2122:11-2125:9; Gaiski Direct, May 2, 2011 Tr. 2343:1-2369:5.

<sup>86</sup> Comcast Exh. 75 (Bond Written Direct) ¶ 16; Comcast Exh. 78 (Gaiski Written Direct) ¶¶ 15-16; Bond Direct, Apr. 29, 2011 Tr. 2110:8-2111:9.

<sup>87</sup> Comcast Exh. 130; Comcast Exh. 588; Comcast Exh. 78 (Gaiski Written Direct) ¶ 14; Gaiski Direct, May 2, 2011 Tr. 2344:1-2347:14. Where – as here – the legitimate business reasons for a negative carriage decision are memorialized in contemporaneous documentation, that documentation is proof of the absence of affiliation-based discrimination. *MASN*, 25 FCC Rcd at 18114 ¶ 21.

<sup>88</sup> Comcast Exh. 588; Gaiski Direct, May 2, 2011 Tr. 2344:1-2347:14.

<sup>89</sup> Comcast Exh. 130; Gaiski Direct, May 2, 2011 Tr. 2353:16-21.

2009 proposal would increase Comcast's cost by roughly [REDACTED] and that all four regional divisions<sup>90</sup> had reported no significant interest from subscribers that might justify incurring those additional costs.<sup>91</sup>

38. Both Mr. Bond and Ms. Gaiski testified that based on this cost-benefit analysis, it made no economic sense for Comcast to accept Tennis Channel's proposal, and that it was on this basis that the proposal was declined.<sup>92</sup> Both also explained that considerations of affiliation or non-affiliation played no role in their decision making.<sup>93</sup> Both Mr. Bond's and Ms. Gaiski's testimony were consistent with the contemporaneous evidence and completely credible.<sup>94</sup>

39. Tennis Channel's counsel raised questions about whether revenues from additional advertising availability (known as "ad avails") might help offset some of this increased cost.<sup>95</sup> But Mr. Bond and Ms. Gaiski explained that Comcast had significant excess ad avail inventory which it was unable to use, so that increasing that excess

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<sup>90</sup> Each individual Comcast cable system is run as its own profit center. (Bond Direct, Apr. 29, 2011 Tr. 1999:6-2000:16). In effect, each system is "essentially a cable operator . . . running a business" with associated costs and revenues. (*Id.* 2000:5-16). Systems are charged with managing their costs – which include programming expenditures and employee salaries – and maximizing their revenues. (*Id.*) As Mr. Bond explained, the systems "have various expenses and they have a profit that's generated and they're judged on their performance." (*Id.*) The overall budget for Comcast Cable at the corporate level is "the aggregation of all of those individual profit centers." (*Id.* 2002:6-16).

<sup>91</sup> Comcast Exhs. 130, 588; Comcast Exh. 78 (Gaiski Written Direct) ¶ 16.

<sup>92</sup> Comcast Exhs. 130, 588, 638; Comcast Exh. 75 (Bond Written Direct) ¶¶ 18-19; Comcast Exh. 78 (Gaiski Written Direct) ¶¶ 17-18; Bond Direct, Apr. 29, 2011 Tr. 2122:11-2125:9; Gaiski Direct, May 2, 2011 Tr. 2343:1-2369:5.

<sup>93</sup> Comcast Exh. 78 (Gaiski Written Direct) ¶ 19; Bond Direct, Apr. 29, 2011 Tr. 2127:3-7.

<sup>94</sup> *See, e.g.*, Comcast Exhs. 130, 588, 638.

<sup>95</sup> Orszag Cross, Apr. 27, 2011 Tr. 1283:7-14.



inventory would not have been a benefit.<sup>96</sup> And although Tennis Channel asked questions about whether wider distribution might lead to increased subscribers, it offered no proof of that, and, in fact, the evidence in the record is to the contrary.<sup>97</sup> Thus, Ms. Gaiski's notes of her June 2009 field check corroborate that in the southern division Comcast had suffered no loss of subscribers when it shifted Tennis Channel from broad carriage to the sports tier in some systems it had acquired from another MVPD.<sup>98</sup> And in response to questioning by Tennis Channel's counsel, Mr. Bond's successor, Mr. Greg Rigdon, explained that he had independently come to the same conclusion when, prior to joining Comcast, he had been in charge of content acquisition at another cable company, Charter.<sup>99</sup>

40. Comcast's cost-benefit analysis is also supported by other evidence in the record and by the absence of any proof of market fallout from Comcast's decision to continue carrying Tennis Channel on the sports tier. The parties agree that DIRECTV and Dish Network are competitors of Comcast,<sup>100</sup> yet Tennis Channel offered no evidence that Comcast had lost any subscribers to its competitors after it declined the MFN offers in 2006 and 2007. And because Comcast subscribers already could receive Tennis Channel programming as part of the sports tier for a monthly fee in the range of

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<sup>96</sup> Bond Direct, Apr. 29, 2011 Tr. 2126:3-2127:2; Bond Cross, Apr. 29, 2011 Tr. 2323:2-2324:8; Gaiski Cross, May 2, 2011 Tr. 2414:15-18.

<sup>97</sup> See *supra* ¶ 28; *infra* ¶¶ 39-40.

<sup>98</sup> Comcast Exh. 130; Gaiski Direct, May 2, 2011 Tr. 2365:4-2366:17.

<sup>99</sup> Rigdon Direct, Apr. 28, 2011 Tr. 1805:21-1806:22; Rigdon Cross, Apr. 28, 2011 Tr. 1854:10-1855:10 (explaining that "there was no real discernible consumer demand" for Tennis Channel).

<sup>100</sup> Tennis Channel Trial Brief at 3; Bond Cross, Apr. 29, 2011 Tr. 2309:22-2310:4.

\$5-8, it was reasonable for Comcast to believe that subscribers who really wanted to see tennis programming (subscribers who Tennis Channel itself describes as among the wealthiest viewers in the market) would simply sign up for its sports tier, rather than terminate their cable service and switch to Dish Network or DIRECTV.<sup>101</sup> As Tennis Channel itself acknowledged, that logic applies to all cable MVPDs with existing sports tiering rights, not just Comcast. Thus, an internal Tennis Channel distribution update to Mr. Solomon in 2010 regarding the continued refusal of another cable MVPD, Time Warner Cable, to increase distribution beyond its sports tier, states that any distributor with the right to carry Tennis Channel on a sports tier would [REDACTED]

[REDACTED] }<sup>102</sup>

41. Finally, Comcast's decision was consistent with, but independent of, the decisions of other MVPDs such as Time Warner Cable, Charter and Cablevision to also carry Tennis Channel on a sports tier and to decline offers from Tennis Channel for broader carriage.<sup>103</sup>

42. The evidence shows that had Tennis Channel been willing to negotiate with Comcast on the cost issue, further discussions would not have been the "waste of time" that Mr. Solomon claimed. Within four months of their June discussion, Mr. Solomon had discussions with one of his colleagues at Tennis Channel about the fact that two other networks not affiliated with Comcast, Sportsman Channel and Outdoor

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<sup>101</sup> Comcast Exh. 78 (Gaiski Written Direct) ¶ 4; Comcast Exh. 283; Bond Direct, Apr. 29, 2011 Tr. 1988:11-1989:14, 2052:13-2054:4; Rigdon Direct, Apr. 28, 2011 Tr. 1806:16-22, 1808:21-1810:8.

<sup>102</sup> Comcast Exh. 121 at TTCCOM\_00065126.

<sup>103</sup> Comcast Exhs. 31, 32, 165, 201, 487, 529, 534, 545.

Channel, had signed deals for broader distribution in certain Comcast regions.<sup>104</sup> That fact corroborated Mr. Bond's statements to Mr. Solomon about being willing to find regions to increase distribution. And Mr. Solomon's reaction to this news corroborated Mr. Bond's point to him that cost was the major issue. In an e-mail responding to the news, Mr. Solomon observed "Yup . . . \$\$\$\$," which he agreed during cross-examination meant that there had been some value exchanged by those other networks in order to incentivize Comcast to give them more distribution.<sup>105</sup> During his testimony, Mr. Solomon admitted that he had never followed up with Mr. Bond after learning about these other transactions to see whether Tennis Channel might be able to strike a similar deal under which it offered some additional value in exchange for the additional distribution it was seeking.<sup>106</sup> That failure to follow up with Mr. Bond is consistent with Mr. Bond's view that Tennis Channel's proposal was really an all-or-nothing demand, and not an attempt at negotiation.<sup>107</sup>

**VII. Golf Channel and Versus Were Not Factors in the 2009 Proposal Discussions**

43. In the substantive discussions between the two sides concerning the 2009 proposal, the distribution of Golf Channel and Versus was never mentioned. Nor was there any mention of those networks in the discussions that Comcast had internally in deciding how to respond to the proposal.<sup>108</sup> Nor did Mr. Solomon mention them during

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<sup>104</sup> Comcast Exh. 707.

<sup>105</sup> Comcast Exh. 707; Solomon Cross, Apr. 25, 2011 Tr. 482:16-483:1.

<sup>106</sup> Solomon Cross, Apr. 25, 2011 Tr. 486:6-487:13.

<sup>107</sup> Bond Direct, Apr. 29, 2011 Tr. 2128:9-2129:7.

<sup>108</sup> See, e.g., Comcast Exhs. 130, 588, 638; Comcast Exh. 78 (Gaiski Written Direct) ¶ 19; Bond Direct, Apr. 29, 2011 Tr. 2127:3-7; Solomon Recross, Apr. 25, 2011 Tr. 533:14-20.

the phone call with Mr. Bond when he learned that Comcast had declined the proposal.<sup>109</sup>

There was, for example, no moment when Mr. Solomon compared Tennis Channel to Golf Channel and Versus, or requested that Comcast give Tennis Channel the same distribution rights as Versus and Golf Channel.<sup>110</sup>

44. No evidence was presented that Comcast's affiliated networks Golf Channel and Versus benefited in any way from Comcast's decision to decline Tennis Channel's 2009 proposal. Golf Channel and Versus already enjoyed wide distribution throughout the industry by 2009 as mature networks launched many years earlier than Tennis Channel.<sup>111</sup>

45. Tennis Channel itself did not see its programming as competing with the programming on Versus and Golf Channel. Instead, Tennis Channel saw itself as complementing those channels by reaching a different, underserved fan base (tennis enthusiasts) with somewhat different demographics.<sup>112</sup> Thus, in its 2009 proposal to Comcast, Tennis Channel emphasized the fact that its sports programming appealed [REDACTED] } than other, more traditional sports programming did.<sup>113</sup>

46. There is also no evidence that Comcast ever considered Tennis Channel's programming to be a threat to the continued success of Golf Channel and Versus. Since Tennis Channel was already available to Comcast subscribers on the sports tier, Comcast

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<sup>109</sup> Gaiski Redirect, May 2, 2011 Tr. 2476:5-9.

<sup>110</sup> Gaiski Redirect, May 2, 2011 Tr. 2476:5-9.

<sup>111</sup> Bond Direct, Apr. 29, 2011 Tr. 1952:9-1954:2; Comcast Exh. 77 (Egan Written Direct) ¶ 12; Orszag Direct, Apr. 27, 2011 Tr. 1223:7-1224:16; Donnelly Direct, May 2, 2011 Tr. 2494:21-2495:1.

<sup>112</sup> Comcast Exhs. 11 at TTCCOM\_00027627, 186; Herman Cross, Apr. 26, 2011 Tr. 669:22-670:5; Comcast Exh. 368 (Herman Dep.) 322:23-323:19.

<sup>113</sup> Comcast Exh. 180 at TTCCOM\_00020724, 20727.



subscribers would not have had to leave Comcast in order to receive more tennis programming.<sup>114</sup> The evidence also showed that at the highest levels of the company, Comcast tried to promote Tennis Channel to its subscribers.<sup>115</sup>

**VIII. Other MVPDs Rejected Broader Carriage of  
Tennis Channel After Its 2009 Proposal to Comcast**

47. Carriage decisions by other distributors also contradict Mr. Solomon's testimony that so-called improvements in Tennis Channel by 2009 made broader distribution of the network "irresistible." Thus, the evidence showed that Tennis Channel unsuccessfully sought broader distribution from several large distributors in 2009 and 2010.

48. In July 2009, Tennis Channel sought broad carriage from Cablevision, which did not then carry the network.<sup>116</sup> Cablevision told Tennis Channel that its proposals were [REDACTED] and had explained that broad carriage would [REDACTED]  
[REDACTED]  
[REDACTED] }<sup>117</sup> Unwilling to distribute Tennis Channel broadly, Cablevision joined the NCTC and launched Tennis Channel on a sports tier in August 2009 pursuant to Tennis Channel's 2002 contract with the NCTC.<sup>118</sup>

49. In March 2010, Tennis Channel proposed to Time Warner Cable that it carry the network on a [REDACTED]

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<sup>114</sup> Comcast Exh. 75 (Bond Written Direct) ¶ 18; Comcast Exh. 78 (Gaiki Written Direct) ¶ 4; Bond Direct, Apr. 29, 2011 Tr. 1988:11-1989:14, 2052:13-2054:4.

<sup>115</sup> Comcast Exh. 604 (June 2007 e-mail from Comcast Chief Executive Officer Brian Roberts to Mr. Bond).

<sup>116</sup> Solomon Cross, Apr. 25, 2011 Tr. 422:21-423:2; Comcast Exhs. 32, 534.

<sup>117</sup> Comcast Exhs. 32, 529, 534.

<sup>118</sup> Comcast Exh. 598; *see also* Comcast Exh. 231 (NCTC Affiliation Agreement).

{ }<sup>119</sup> Like Comcast, Time Warner Cable had a longer term deal pursuant to which Tennis Channel granted it the right to carry the network on a sports tier, and that deal was not expiring when Tennis Channel made its proposal for digital basic carriage.<sup>120</sup> Time Warner Cable rejected Tennis Channel's proposal, explaining that the { } since Tennis Channel's proposal would have increased Time Warner Cable's total license fees by approximately { } per year. Time Warner Cable

{ }<sup>121</sup> Time Warner Cable elected to continue carrying Tennis Channel on a sports tier under its contract.<sup>122</sup> Mr. Solomon testified that Time Warner Cable's decision to continue carrying Tennis Channel on a sports tier did not constitute discrimination.<sup>123</sup>

50. In 2010, Tennis Channel proposed to Dish Network that it distribute Tennis Channel to { } more subscribers. Tennis Channel argued that its programming warranted broader carriage, and emphasized that broader distribution would increase the value of Dish Network's equity in Tennis Channel.<sup>124</sup> But Dish Network declined Tennis Channel's proposal, and instead its distribution of Tennis Channel { } from 2009 to 2010.<sup>125</sup>

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<sup>119</sup> Comcast Exh. 487.

<sup>120</sup> Solomon Cross, Apr. 25, 2011 Tr. 340:18-341:2; Comcast Exh. 165.

<sup>121</sup> Comcast Exh. 31.

<sup>122</sup> Comcast Exhs. 165, 201.

<sup>123</sup> Solomon Cross, Apr. 25, 2011 Tr. 342:4-343:13.

<sup>124</sup> Comcast Exh. 632.

<sup>125</sup> Comcast Exh. 201; Comcast Exh. 650 at TTCCOM\_00065227, 65230; Comcast Exh. 80 (Orszag Written Direct) ¶¶ 22-23.

51. In May 2010, Tennis Channel approached Charter to seek distribution [REDACTED] <sup>126</sup> Charter rejected Tennis Channel's requests to carry the service more broadly due to a lack of consumer demand for Tennis Channel. <sup>127</sup>

52. In 2010, Tennis Channel acknowledged that distributors with the contractual right to carry the service on their sports tiers would rather do so than distribute Tennis Channel more broadly. <sup>128</sup> Mr. Solomon testified that Tennis Channel lacks negotiating leverage with distributors whose affiliation agreements with Tennis Channel are not expiring, since those distributors have the ability to continue to offer Tennis Channel on its sports tier, and, as a result, are not choosing between broad carriage of Tennis Channel and no carriage. <sup>129</sup>

53. Each of the five largest cable companies – Comcast, Time Warner Cable, Cox, Charter, and Cablevision – continues to exercise its contractual right to carry Tennis Channel on its sports tier. <sup>130</sup> Tennis Channel has not alleged that the carriage decisions of any of these other distributors were discriminatory.

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<sup>126</sup> Comcast Exh. 545.

<sup>127</sup> Comcast Exh. 545; Rigdon Direct, Apr. 28, 2011 Tr. 1798:15-1799:5, 1806:16-22.

<sup>128</sup> Comcast Exh. 121 [REDACTED]

<sup>129</sup> Solomon Cross, Apr. 25, 2011 Tr. 339:22-340:17; Solomon Recross, Apr. 25, 2011 Tr. 531:6-15.

<sup>130</sup> Comcast Exh. 80 (Orszag Written Direct) ¶¶ 19, 22-23; Comcast Exh. 659; Comcast Exh. 517 (Solomon Dep.) 154:3-154:11; 196:9-197:19.

**IX. Comcast Does Not Discriminate in Favor of Its Affiliated Networks**

**A. Comcast's Carriage of Golf Channel and Versus Is Based on Legitimate and Non-Discriminatory Business Reasons**

54. The consistent and undisputed testimony of Comcast's fact witnesses establishes that Comcast has legitimate and non-discriminatory business reasons for carrying Golf Channel and Versus on broadly distributed tiers.

55. Both Golf Channel and Versus (then the Outdoor Life Network) were broadly distributed on Comcast and other distributors by the late 1990s, years before Tennis Channel was launched in 2003.<sup>131</sup> Both networks established their wide distribution in an era in which it was far easier to obtain broad carriage.<sup>132</sup> In addition, both networks paid distributors including Comcast hundreds of millions of dollars in launch incentives to reduce the cost of broad carriage.<sup>133</sup>

56. Both Golf Channel and Versus launched before sports tiers were created; Comcast's affiliation agreements with Golf Channel and Versus require broad distribution; and neither network has ever offered Comcast the right to carry it on a sports tier.<sup>134</sup>

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<sup>131</sup> Bond Direct, Apr. 29, 2011 Tr. 1957:6-17, 1962:1-10, 1964:3-9, 1967:4-9; Bond Cross, Apr. 29, 2011 Tr. 2166:15-21.

<sup>132</sup> See *supra* ¶¶ 13-15.

<sup>133</sup> See *supra* ¶ 14.

<sup>134</sup> Bond Cross, Apr. 29, 2011 Tr. 2160:10-2161:17; Bond Direct, Apr. 29, 2011 Tr. 1949:9-1950:17; Tennis Channel Exh. 139 (Bond Dep.) 220:8-24. Comcast most recently renewed its affiliation agreements with Versus and Golf Channel in 2009 and 2011, respectively. (Comcast Exh. 458, Tennis Channel Exh. 155). Neither of those renewals involved negotiations over an increase in the network's distribution. (Tennis Channel Exh. 143 (Shell Dep.) 93:7-94:8; Tennis Channel Exh. 139 (Bond Dep.) 211:12-19, 219:21-220:7).



57. Once networks gain broad penetration, distributors rarely negatively reposition them because doing so would upset the settled expectations of subscribers and generate subscriber churn.<sup>135</sup> Mr. Bond testified that established networks generally retain their broad distribution level, and that “the vast majority . . . of renewal agreements don’t involve a change in distribution.”<sup>136</sup>

58. Comcast’s renewal discussions with established networks, whether affiliated networks or unaffiliated, focus on the network’s per-subscriber fee rather than changes in the level of distribution.<sup>137</sup> Mr. Bond and Ms. Gaiski provided unrebutted testimony that Comcast handles its renewal negotiations with Golf Channel and Versus on an arm’s-length basis, the same way it handles its renewal negotiations with other established networks that were launched and gained broad carriage at similar times.<sup>138</sup> For instance, Comcast bargains with Golf Channel and Versus for the most advantageous MFN protections possible.<sup>139</sup>

59. The record shows that both Golf Channel and Versus have a proven ability to attract and retain subscribers.<sup>140</sup> During Charter’s 2007 negotiations over the renewal

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<sup>135</sup> Comcast Exh. 75 (Bond Written Direct) ¶ 31; Bond Cross, Apr. 29, 2011 Tr. 2194:19-2195:5, 2235:10-2237:3; Tennis Channel Exh. 139 (Bond Dep.) 219:13-220:7; Comcast Exh. 78 (Gaiski Written Direct) ¶ 26; Comcast Exh. 80 (Orszag Written Direct) ¶ 42 & n.59.

<sup>136</sup> Bond Cross, Apr. 29, 2011 Tr. 2194:19-2195:21, 2240:21-2241:13; Tennis Channel Exh. 139 (Bond Dep.) 219:13-220:7.

<sup>137</sup> Bond Cross, Apr. 29, 2011 Tr. 2235:3-2237:3.

<sup>138</sup> Bond Cross, Apr. 29, 2011 Tr. 2235:3-2238:16; Comcast Exh. 78 (Gaiski Written Direct) ¶¶ 24, 26.

<sup>139</sup> Bond Cross, Apr. 29, 2011 Tr. 2237:11-2238:16; Comcast Exh. 78 (Gaiski Written Direct) ¶ 24.

<sup>140</sup> Comcast Exh. 78 (Gaiski Written Direct) ¶ 26; Rigdon Recross, Apr. 28, 2011 Tr. 1920:13-22.

of its affiliation agreements with Golf Channel and Versus, Golf Channel viewers “overwhelmed” Charter with demands that it continue to air the network.<sup>141</sup> Hundreds of thousands of Charter subscribers called Charter’s customer call centers, and senior programming executives directly received hundreds of e-mail messages from both Golf Channel and Versus viewers.<sup>142</sup> In response, Charter maintained Golf Channel and Versus on a highly penetrated tier.<sup>143</sup>

60. Comcast’s broad carriage of Golf Channel and Versus is consistent with the carriage of those networks by other distributors, which have no ownership of either network.<sup>144</sup> All major MVPDs, except Dish Network, carry both Golf Channel and Versus to more than [REDACTED] of their subscribers,<sup>145</sup> while most major MVPDs carry Tennis Channel on their sports tiers.<sup>146</sup> Every major MVPD – including Tennis Channel’s parent companies Dish Network and DIRECTV – carries both Golf Channel and Versus to [REDACTED] than Tennis Channel.<sup>147</sup>

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<sup>141</sup> Rigdon Redirect, Apr. 28, 2011 Tr. 1905:6-1909:1; Rigdon Recross, Apr. 28, 2011 Tr. 1918:2-1919:7.

<sup>142</sup> Rigdon Redirect, Apr. 28, 2011 Tr. 1905:6-1909:1; Rigdon Recross, Apr. 28, 2011 Tr. 1918:2-16, 1920:3-12.

<sup>143</sup> Rigdon Recross, Apr. 28, 2011 Tr. 1920:13-22 (“Frankly, the company was in such a state of panic based on the calls coming in both for Golf and Versus that it no longer mattered.”).

<sup>144</sup> Comcast Exh. 75 (Bond Written Direct) ¶ 29; Donnelly Direct, May 2, 2011 Tr. 2494:21-2495:15; Comcast Exhs. 259, 260, 1102.

<sup>145</sup> Comcast Exhs. 259, 260, 1102, 1103.

<sup>146</sup> *Supra* ¶¶ 18, 53.

<sup>147</sup> Comcast Exhs. 201, 260, 2601, 1102, 1103.

**B. Comcast's Carriage of Three Major League Networks Is Based on Legitimate and Non-Discriminatory Business Reasons**

61. The consistent and undisputed testimony of Comcast's fact witnesses establishes that Comcast has legitimate and non-discriminatory business reasons for carrying three Major League networks – NBA TV, NHL Network and MLB Network – on Comcast's D1 tier.<sup>148</sup>

62. As to NBA TV, Mr. Bond and Ms. Gaiki testified that in 2009, Comcast provided that network with broader distribution [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>150</sup> This testimony is uncontroverted by any fact witness or other competent evidence.

63. As to NHL Network, Mr. Bond and Ms. Gaiki testified that in 2009, Comcast provided that network with broader distribution pursuant to an MFN offer that allowed Comcast to move the network from the sports tier to D1 without a material cost increase.<sup>151</sup>

64. After concluding an agreement with DIRECTV in which it reduced its per-subscriber fee and offered equity in exchange for broader carriage, NHL Network

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<sup>148</sup> See *infra* ¶¶ 62-65.

<sup>149</sup> Comcast Exh. 75 (Bond Written Direct) ¶ 23; Bond Direct, Apr. 29, 2011 Tr. 2145:7-2147:11; Comcast Exh. 78 (Gaiki Written Direct) ¶ 22; Gaiki Cross, May 2, 2011 Tr. 2430:3-10.

<sup>150</sup> Comcast Exh. 75 (Bond Written Direct) ¶ 23.

<sup>151</sup> Comcast Exhs. 311, 312; Comcast Exh. 75 (Bond Written Direct) ¶ 24; Bond Direct, Apr. 29, 2011 Tr. 2148:19-2149:4, 2151:5-2152:3; Comcast Exh. 78 (Gaiki Written Direct) ¶ 22; Gaiki Redirect, May 2, 2011 Tr. 2456:18-2458:2.



offered Comcast the same terms pursuant to an MFN obligation.<sup>152</sup> In that offer, NHL Network reduced its license fee to approximately { } per subscriber per month, which is significantly { } the rate that Comcast currently pays for Tennis Channel.<sup>153</sup> It is also { }

{ }<sup>154</sup> Due to the price cut, Comcast's overall license fees to NHL Network did not change materially as a result of providing expanded distribution.<sup>155</sup> This testimony is uncontroverted by any fact witness or other competent evidence.

65. As to the MLB Network, Mr. Bond and Ms. Gaiski testified that in 2009, Comcast launched that network on D1 because Major League Baseball ("MLB") conditioned Comcast's access to the valuable out-of-market package, MLB Extra Innings, on a D1 launch for MLB Network.<sup>156</sup> MLB previously had granted exclusive access to distribute Extra Innings to DIRECTV,<sup>157</sup> but that led to congressional hearings

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<sup>152</sup> Comcast Exhs. 311, 312; Comcast Exh. 75 (Bond Written Direct) ¶ 24; Bond Direct, Apr. 29, 2011 Tr. 2148:3-2152:3; Comcast Exh. 78 (Gaiski Written Direct) ¶ 22.

<sup>153</sup> Comcast Exhs. 311, 312; Comcast Exh. 75 (Bond Written Direct) ¶ 24; Bond Direct, Apr. 29, 2011 Tr. 2148:19-2149:4, 2151:5-2152:3; Comcast Exh. 78 (Gaiski Written Direct) ¶ 22; Gaiski Redirect, May 2, 2011 Tr. 2456:18-2458:2.

<sup>154</sup> Comcast Exh. 78 (Gaiski Written Direct) ¶¶ 13-14, 22; Gaiski Redirect, May 2, 2011 Tr. 2456:18-2458:2.

<sup>155</sup> Comcast Exh. 75 (Bond Written Direct) ¶ 24; Bond Direct, Apr. 29, 2011 Tr. 2148:19-2149:4, 2151:5-2152:3; Comcast Exh. 78 (Gaiski Written Direct) ¶ 22; Gaiski Redirect, May 2, 2011 Tr. 2456:18-2458:2.

<sup>156</sup> Comcast Exh. 75 (Bond Written Direct) ¶ 22; Bond Direct, Apr. 29, 2011 Tr. 2138:16-2144:17; Comcast Exh. 78 (Gaiski Written Direct) ¶ 22; Gaiski Cross, May 2, 2011 Tr. 2430:3-10.

<sup>157</sup> Comcast Exh. 75 (Bond Written Direct) ¶ 22; Bond Direct, Apr. 29, 2011 Tr. 2139:22-2140:22.



and political fallout for MLB.<sup>158</sup> Subsequently, MLB offered other distributors, including Comcast, access to Extra Innings under the same terms as its agreement with DIRECTV. Specifically, in exchange for the right to distribute Extra Innings, Comcast agreed to launch MLB Network (which did not exist) on D1, and to pay certain guarantees on Extra Innings.<sup>159</sup> Like Cox, Time Warner Cable and other distributors, Comcast accepted the deal.<sup>160</sup> As part of the deal, Comcast was offered, and accepted, a similar equity interest in MLB Network that MLB had offered to DIRECTV.<sup>161</sup> Comcast was never offered the option of carrying MLB Network on a sports tier.<sup>162</sup> This testimony is uncontroverted by any fact witness or other competent evidence.<sup>163</sup>

**X. Credibility and Weight of Expert Testimony**

66. The weight of the credible expert testimony confirms that Comcast's decision not to accept the 2009 proposal did not constitute discrimination on the basis of affiliation.

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<sup>158</sup> Comcast Exh. 75 (Bond Written Direct) ¶ 22; Bond Direct, Apr. 29, 2011 Tr. 2139:22-2141:1, 2143:22-2144:6.

<sup>159</sup> Comcast Exh. 75 (Bond Written Direct) ¶ 22; Bond Direct, Apr. 29, 2011 Tr. 2141:6-2144:17.

<sup>160</sup> Bond Direct, Apr. 29, 2011 Tr. 2141:6-2144:17.

<sup>161</sup> Comcast Exh. 75 (Bond Written Direct) ¶ 22; Bond Direct, Apr. 29, 2011 Tr. 2141:22-2143:3.

<sup>162</sup> Bond Cross, Apr. 29, 2011 Tr. 2180:12-22.

<sup>163</sup> Dr. Singer testified at trial, based solely on a *Washington Times* article, that Comcast was planning to carry MLB Network on a sports tier prior to being granted equity. (Singer Direct, Apr. 26, 2011 Tr. 855:1-9; Singer Cross, Apr. 26, 2011 Tr. 952:8-955:6). Putting aside the fact that the article provides no support for Dr. Singer's testimony, such expert testimony would not be a competent basis for disputing Mr. Bond's and Ms. Gaiski's fact testimony based on firsthand knowledge.

**A. The Carriage Decisions of Other MVPDs Provide Independent Evidence That Comcast Did Not Discriminate on the Basis of Affiliation**

67. The evidence regarding carriage of Tennis Channel by other MVPDs, which is not disputed, shows that Comcast's carriage of Tennis Channel is in line with the market generally. When the largest distributors are ranked by Tennis Channel's penetration among their subscribers, Comcast falls in the middle.<sup>164</sup>

68. Mr. Orszag persuasively opined that other cable companies provide the most relevant benchmarks for Comcast's carriage decisions because they face the same competitive pressures (primarily from satellite and telco distributors), use similar technologies, and confront similar bandwidth constraints,<sup>165</sup> and because no cable company distributes Tennis Channel pursuant to an equity-for-carriage deal.<sup>166</sup>

69. It is undisputed that all of the large cable companies carry Tennis Channel on some form of a sports tier.<sup>167</sup> [REDACTED]

[REDACTED]

[REDACTED]<sup>168</sup> The independent carriage decisions of these comparable distributors, none of which is affiliated with Tennis Channel or a

<sup>164</sup> Comcast Exh. 1103.

<sup>165</sup> Comcast Exh. 80 (Orszag Written Direct) ¶ 20.

<sup>166</sup> Comcast Exh. 80 (Orszag Written Direct) ¶¶ 22-23; Comcast Exh. 659; Solomon Cross, Apr. 25, 2011 Tr. 423:15-424:5.

<sup>167</sup> *Supra* ¶ 53.

<sup>168</sup> Comcast Exh. 80 (Orszag Written Direct) ¶¶ 22-23 & Table 1A (all cable companies other than Comcast carry Tennis Channel, on average, at [REDACTED] penetration); Comcast Exh. 659. Notably, Dr. Singer's analysis does not consider all of the MVPDs that do not carry Tennis Channel. (Tennis Channel Exh. 16 (Singer Written Direct) ¶ 54 (counting only "NCTC member systems that carry Tennis Channel through NCTC"); Orszag Direct, Apr. 27, 2011 Tr. 1221:20-1222:7 ("Dr. Singer . . . ignores every single MVPD in the country that does not carry the Tennis Channel.")).

network comparable to Tennis Channel, confirm that Comcast did not act on a discriminatory motive in declining Tennis Channel's 2009 proposal for broad carriage.

70. Direct comparisons with satellite distributors DIRECTV and Dish Network are not probative because both carry Tennis Channel pursuant to equity-for-carriage deals.<sup>169</sup> Internal Tennis Channel documents show that broad carriage of Tennis Channel is consistent with those distributors' strategy of competing with cable companies by offering different programming choices (so-called [REDACTED] and reflects that satellite subscribers more closely [REDACTED] [REDACTED] } than cable subscribers do.<sup>170</sup>

71. The carriage of Tennis Channel by telcos Verizon and AT&T further illustrates the legitimacy of Comcast's decision not to give up its contractual right to carry Tennis Channel on a sports tier. Verizon carries Tennis Channel under the NCTC contract, [REDACTED]

[REDACTED]<sup>171</sup> Verizon launched Tennis Channel broadly, but negatively repositioned the network in January 2010 after

<sup>169</sup> *Supra* ¶¶ 21-23. [REDACTED]

[REDACTED] (Comcast Exh. 508; Comcast Exh. 517 (Solomon Dep.) 314:23-315:5).

<sup>170</sup> Comcast Exhs. 111, 428; Comcast Exh. 80 (Orszag Written Direct) ¶ 24; Comcast Exh. 122. DIRECTV alone provides Tennis Channel with approximately [REDACTED] subscribers, nearly [REDACTED] of all Tennis Channel subscribers. (Comcast Exh. 201; Tennis Channel Exh. 14 (Solomon Written Direct) ¶ 8). In fact, DIRECTV's carriage of Tennis Channel is so out of line with the marketplace that Tennis Channel refers to DIRECTV as its [REDACTED] (Comcast Exh. 121).

<sup>171</sup> Comcast Exhs. 231, 552. The NCTC agreement provides that a distributor shall not [REDACTED]



concluding, through experience, that broad distribution [REDACTED]<sup>172</sup>  
 As required by its contract, [REDACTED] but Tennis  
 Channel has estimated that, because of subscriber attrition, its penetration on Verizon is  
 falling [REDACTED] per month.<sup>173</sup> AT&T did not even carry Tennis Channel until June  
 2010, long after Tennis Channel stopped agreeing to sports tier carriage, and as of  
 September 2010 AT&T carried Tennis Channel on its U-450 tier, [REDACTED]  
 [REDACTED]<sup>174</sup>

72. Tennis Channel's distribution reflects the fact that its programming is not  
 sufficiently compelling to make a material contribution to the ability of a distributor to  
 retain or attract subscribers. Tennis Channel's event coverage consists largely of matches  
 that it receives for free that other networks are not interested in carrying.<sup>175</sup> Tennis  
 Channel's limited Grand Slam coverage is of minimal value to distributors, since the  
 majority of matches in those tournaments, including the most important matches, are  
 available to the distributors' subscribers on other television networks and online.<sup>176</sup>  
 Tennis Channel airs only early round coverage of the U.S. Open<sup>177</sup> and the Australian

<sup>172</sup> Comcast Exhs. 627, 650. As a result of the negative reposition, Verizon  
 distributes Tennis Channel on a tier received by [REDACTED] of Verizon subscribers.  
 (Comcast Exh. 650).

<sup>173</sup> Comcast Exh. 650.

<sup>174</sup> Comcast Exhs. 201, 250.

<sup>175</sup> Comcast Exhs. 127, 624, 342 (Tennis Channel broadcasts "the tournaments the  
 major networks don't want to cover – which is to say, almost all of them.").

<sup>176</sup> Comcast Exhs. 151, 160, 161, 162, 163, 170, 171; Comcast Exh. 77 (Egan  
 Written Direct) ¶¶ 44-45 (Comcast subscribers had access to more than 2,000 hours of  
 Grand Slam tennis coverage in 2010 on CBS, NBC, ESPN, ESPN2, and ESPN3.).

<sup>177</sup>

[REDACTED] (Comcast Exh. 482).

[REDACTED] (Comcast Exh. 539).



Open, and airs no live coverage of Wimbledon.<sup>178</sup> Moreover, Tennis Channel already had acquired its rights to Wimbledon, the French Open, and the Australian Open by July 2007 when Comcast declined Tennis Channel's equity-for-carriage offer, which Mr. Solomon testified did not constitute discrimination.<sup>179</sup>

**B. Fundamental Differences Between Tennis Channel and Both Golf Channel and Versus Account for Why All Major MVPDs Carry Golf Channel and Versus More Broadly**

73. Despite some superficial similarities, particularly between Tennis Channel and Golf Channel, there are fundamental differences between Tennis Channel and both Golf Channel and Versus that account for why all major MVPDs carry Golf Channel and Versus more broadly than Tennis Channel. Those differences were demonstrated by, among other evidence, the credible testimony of independent industry experts with decades of experience – Mike Egan (cable industry) and Marc Goldstein (advertising industry) – and by candid descriptions of the networks and their audiences in internal Tennis Channel documents that contradict its own experts' testimony.

*1. Golf Channel and Versus were launched in a different era*

74. When Golf Channel and Versus were launched in 1995, neither Tennis Channel nor sports tiers existed,<sup>180</sup> and it was far easier for a cable network to gain broad

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<sup>178</sup> Comcast Exh. 723; Solomon Cross, Apr. 25, 2011 Tr. 442:21-443:4; Comcast Exh. 77 (Egan Written Direct) ¶ 44. As reflected in an internal Tennis Channel document, one of Tennis Channel's investors conceded that he [REDACTED] (Comcast Exh. 89).

<sup>179</sup> Comcast Exhs. 66, 164; Solomon Cross, Apr. 25, 2011 Tr. 457:11-16.

<sup>180</sup> Bond Direct, Apr. 29, 2011 Tr. 1949:9-1950:17, 1969:5-1971:9; Egan Direct, Apr. 28, 2011 Tr. 1595:1-9.

distribution than when Tennis Channel launched in 2003.<sup>181</sup> Strong incentives for cable companies to add programming in the mid-1990s resulted from the relaxation of cable rate regulations and new competition from satellite providers.<sup>182</sup> During that time period, channels such as Syfy, History Channel, Fox News Channel, MSNBC, ESPN2, Golf Channel and OLN (now Versus) all launched and gained distribution on widely penetrated tiers.<sup>183</sup> The broad distribution that Golf Channel and Versus now enjoy was earned over the course of more than fifteen years, including through hundreds of millions of dollars of distribution incentives paid, in aggregate, to Comcast and other distributors.<sup>184</sup>

75. In contrast, it was a much more difficult environment to obtain broad carriage when Tennis Channel launched in 2003. As a result of the influx of new cable networks in the 1990s, distributors' programming costs – and, as a result, retail rates to subscribers – had increased significantly.<sup>185</sup> At the same time, heightened competition from satellite companies and new entrants AT&T and Verizon restrained distributors'

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<sup>181</sup> Comcast Exh. 75 (Bond Written Direct) ¶¶ 29-30; Bond Direct, Apr. 29, 2011 Tr. 1952:9-1954:2, 1969:5-1970:4; Comcast Exh. 77 (Egan Written Direct) ¶¶ 12-15.

<sup>182</sup> Bond Direct, Apr. 29, 2011 Tr. 1951:1-1952:22; Comcast Exh. 77 (Egan Written Direct) ¶ 12.

<sup>183</sup> Bond Direct, Apr. 29, 2011 Tr. 1952:9-1954:2; Comcast Exh. 77 (Egan Written Direct) ¶ 12; *see also* Orszag Direct, Apr. 27, 2011 Tr. 1223:9-1224:16.

<sup>184</sup> Comcast Exh. 76 (Donnelly Written Direct) ¶ 18; Donnelly Direct, May 2, 2011 Tr. 2494:21-2495:7; Comcast Exh. 75 (Bond Written Direct) ¶¶ 28-29; Bond Direct, Apr. 29, 2011 Tr. 1962:5-10; *see also* Comcast Exh. 77 (Egan Written Direct) ¶ 13.

<sup>185</sup> Comcast Exh. 77 (Egan Written Direct) ¶ 14; Egan Direct, Apr. 28, 2011 Tr. 1591:14-1595:15; *see supra* ¶ 15; *see also* Solomon Direct, Apr. 25, 2011 Tr. 258:5-11 (testifying that eight years is a “long time” by the “cable business standard”).

ability to continue to add programming and to pass those increased costs along to subscribers.<sup>186</sup>

76. In light of those challenges, a number of distributors, including Comcast and Time Warner Cable, created sports tiers (and other specialized tiers of service) which allowed networks that might not be carried at all to be distributed to those customers that wanted them most.<sup>187</sup> Sports tiers allow distributors to add incremental programming without having to pass along increased programming costs to all subscribers.<sup>188</sup> Tennis Channel took advantage of the development of sports tiers to gain distribution by Comcast and other large cable companies.<sup>189</sup>

77. Tennis Channel argues that Comcast's addition of the Major League networks – NBA TV, NHL Network and MLB Network – to its D1 tier in 2009 shows that it was not harder for networks launched in the 2000s to obtain broad distribution if they were affiliated with Comcast.<sup>190</sup> Contrary to that argument, however, the examples of the Major League networks highlight the price concessions and compelling content that were required for a network to obtain D1 distribution for the first time in 2009.<sup>191</sup> Tennis Channel has not attempted to show that it is substantially similar to any of the Major League networks. Nor has Tennis Channel rebutted Comcast's showing that its

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<sup>186</sup> Comcast Exh. 77 (Egan Written Direct) ¶ 14; Egan Direct, Apr. 28, 2011 Tr. 1591:14-1595:15.

<sup>187</sup> Bond Direct, Apr. 29, 2011 Tr. 1969:5-1971:9.

<sup>188</sup> Bond Direct, Apr. 29, 2011 Tr. 1969:5-1971:9.

<sup>189</sup> *See supra* ¶¶ 16-19.

<sup>190</sup> Tennis Channel Opening, Apr. 25, 2011 Tr. 126:2-128:14.

<sup>191</sup> *See supra* ¶¶ 61-65.

respective decisions to carry those networks on D1 were each based on legitimate business reasons.<sup>192</sup>

2. *Tennis Channel is not similar to Golf Channel or Versus in terms of subscriber demand*

78. Tennis Channel is not similar to Golf Channel or Versus in terms of the intensity of subscriber demand for each network. As Comcast's fact witnesses testified – and its expert witnesses Mike Egan and Jonathan Orszag corroborated – MVPDs consider, when making carriage decisions, the extent to which carriage of a network can retain existing subscribers or attract new subscribers.<sup>193</sup>

79. As previously found, the uncontroverted evidence shows that there is not significant subscriber demand for Tennis Channel<sup>194</sup> whereas, in contrast, there is significant subscriber demand for Golf Channel and Versus.<sup>195</sup>

3. *Tennis Channel's programming content differs significantly from that of Golf Channel and Versus*

80. Mr. Egan, Comcast's programming expert, gave un rebutted testimony – based on systematically viewing hours of each network's programming that he independently selected – that Tennis Channel projects a demonstrably different image, from the perspective of a viewer, than either Golf Channel or Versus projects. Mr. Egan opined that Tennis Channel projects a “hip,” “international,” and “young” image, with

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<sup>192</sup> See *supra* ¶¶ 61-65.

<sup>193</sup> Comcast Exh. 75 (Bond Written Direct) ¶ 32; Rigdon Direct, Apr. 28, 2011 Tr. 1806:3-8; Comcast Exh. 77 (Egan Written Direct) ¶ 8; Egan Cross, Apr. 28, 2011 Tr. 1768:2-1770:9; Comcast Exh. 80 (Orszag Written Direct) ¶¶ 26, 73.

<sup>194</sup> See *supra* ¶¶ 39-40, 47-51.

<sup>195</sup> See *supra* ¶¶ 59-60.



younger, sophisticated, diverse, and often female on-air personalities.<sup>196</sup> In contrast, Golf Channel projects a “calm,” “mature,” and “country club” persona.<sup>197</sup> Mr. Egan testified that, unlike Tennis Channel, Golf Channel’s on-air look is decidedly not “hip” or “risque,” citing the example of Golf Channel announcers sitting in front of a fireplace.<sup>198</sup> Mr. Egan also contrasted Tennis Channel with Versus, testifying that Versus is a “kaleidoscope” covering more than twenty different sports, including the National Hockey League, the Tour de France, cagefighting, hunting and fishing, college football, and skiing and snowboarding.<sup>199</sup> As a general matter, Versus projects a “violent” and “aggressive” image through, among other things, its extensive extreme hunting programming and “wacky, almost MTVish” extreme sports shows, targeting a “younger, male audience,” and rural viewers.<sup>200</sup>

81. Mr. Egan testified that Tennis Channel’s programming mix is different from Golf Channel’s programming mix. Golf Channel offers more live event coverage than does Tennis Channel,<sup>201</sup> and virtually all of Golf Channel’s event coverage is exclusive to the Golf Channel.<sup>202</sup> In contrast, much of Tennis Channel’s high profile tournament coverage is not exclusive to Tennis Channel, as most of its Grand Slam coverage is either broadcast first on another network, streamed live on the Internet, or

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<sup>196</sup> Egan Direct, Apr. 28, 2011 Tr. 1518:14-1519:16, 1520:8-1521:17.

<sup>197</sup> Egan Direct, Apr. 28, 2011 Tr. 1514:12-22, 1527:13-19.

<sup>198</sup> Egan Direct, Apr. 28, 2011 Tr. 1514:12-22, 1518: 2-10.

<sup>199</sup> Egan Direct, Apr. 28, 2011 Tr. 1539:17-1540:1, 1539:22-1546:19.

<sup>200</sup> Egan Direct, Apr. 28, 2011 Tr. 1534:17-1539:13.

<sup>201</sup> Comcast Exh. 77 (Egan Written Direct) ¶ 51; Egan Direct, Apr. 28, 2011 Tr. 1560:4-13.

<sup>202</sup> Comcast Exh. 77 (Egan Written Direct) ¶¶ 40-43.